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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,605	01/22/2001	Mario Polegato Moretti	202115US3	9737

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[REDACTED] EXAMINER

STASHICK, ANTHONY D

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3728

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/765,605

Applicant(s)

POLEGATO MORETTI, MARIO

Examiner

Anthony D Stashick

Art Unit

3728

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

a)  The period for reply expires 3 months from the mailing date of the final rejection.  
b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on 21 October 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.  The proposed amendment(s) will not be entered because:

- they raise new issues that would require further consideration and/or search (see NOTE below);
- they raise the issue of new matter (see Note below);
- they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a)a) approved or b)b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: \_\_\_\_\_.

  
Anthony D. Stashick  
Primary Examiner  
Art Unit: 3728

Continuation of 5. does NOT place the application in condition for allowance because: the arguments in the request for reconsideration are unconvincing. Applicant argues that there is no motivation statement for the combinations made. There are motivation statements made after every combination in the rejections. Applicant argues that there is no teaching to make the sole leather. Leather sole are well known in the art and making a sole out of leather, rubber or plastic would be within the skill of one of ordinary skill in the art and dependent on the performance desired of the sole. Applicant arguments with respect to adding water impermeable layer to the sole of Dassler is not clearly understood. It is well known that when hole are placed within a material, water can flow through those hole and therefore, the addition of the water impermeable layer to prevent this flow of fluid in one direction would be necessary to keep fluid out of the shoe while still allowing the shoe to breathe, i.e. air to enter and exit. With respect to the arguments directed toward Squandroni, Squandroni teaches the ventilation of leather soles as well as rubber soles, independently of which type of sole is "desired".